

STATE OF MICHIGAN
COURT OF APPEALS

AUTO CLUB GROUP INSURANCE
COMPANY,

UNPUBLISHED
November 9, 2001

Plaintiff-Appellee,

v

No. 225812
Oakland Circuit Court
LC No. 99-013916-CK

TODD BAUSWELL,

Defendant-Appellee,

and

KELLY MILLER, Personal Representative of the
Estate of LEONARD MILLER, Deceased,

Defendant-Appellant.

Before: Doctoroff, P.J., and Wilder and Schmucker*, JJ.

PER CURIAM.

Defendant Miller appeals as of right from a circuit court order granting plaintiff's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

An insurance policy is much the same as any other contract. It is an agreement between the parties in which a court will determine what the agreement was and effectuate the intent of the parties. *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 566; 489 NW2d 431 (1992). When determining what the parties' agreement is, the court should read the contract as a whole and give meaning to all the terms contained within the policy. The court must give the language contained in the policy its plain and ordinary meaning so that technical and strained constructions are avoided. *Royce v Citizens Ins Co*, 219 Mich App 537, 542; 557 NW2d 144 (1996). If the insurance contract sets forth definitions, the policy language must be interpreted according to those definitions. *Cavalier Mfg Co v Employers Ins of Wausau (On Remand)*, 222 Mich App 89, 94; 564 NW2d 68 (1997). Clear and unambiguous language may not be rewritten under the guise of interpretation. *South Macomb Disposal Auth v American Ins Co (On Remand)*, 225 Mich App 635, 653; 572 NW2d 686 (1997). Courts may not create ambiguities

* Circuit judge, sitting on the Court of Appeals by assignment.

where none exist, but must construe ambiguous policy language in the insured's favor. *Id.* Policy language is ambiguous when, after reading the entire document, its language can be reasonably understood in different ways. *Royce, supra.* "However, if a contract, even an inartfully worded or clumsily arranged contract, fairly admits of but one interpretation, it may not be said to be ambiguous or fatally unclear." *Michigan Twp Participating Plan v Pavolich*, 232 Mich App 378, 382; 591 NW2d 325 (1998). The construction and interpretation of an insurance policy and whether the policy language is ambiguous are questions of law that are reviewed de novo on appeal. *Henderson v State Farm Fire & Cas Co*, 460 Mich 348, 353; 596 NW2d 190 (1999). The trial court's ruling on a motion for summary disposition is also reviewed de novo. *Gibson v Neelis*, 227 Mich App 187, 189; 575 NW2d 313 (1997).

Plaintiff's policy expressly excluded liability coverage for bodily injury resulting from a criminal act or omission. This Court has ruled that such an exclusion unambiguously "precludes coverage for bodily injury resulting from a criminal act," regardless of whether the crime or the resulting injury was intended or reasonably expected by the insured. *Allstate Ins Co v Fick*, 226 Mich App 197, 202-204; 572 NW2d 265 (1997). Defendant Bauswell, plaintiff's insured, was convicted of careless, reckless, or negligent discharge of a firearm, MCL 752.861, for causing the injury for which coverage is sought. Accordingly, we find that the trial court did not err in ruling that the criminal acts exclusion was not ambiguous and precluded coverage.

Affirmed.

/s/ Martin M. Doctoroff

/s/ Kurtis T. Wilder

/s/ Chad C. Schmucker